IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 513.

WILLIAM A. LYON, Superintendent of Banks of the State of New York, as Liquidator of the business and property of Yokohama Specie Bank, Ltd., in the State of New York,

Petitioner,

—against—

BANQUE MELLIE IRAN.

No. 528.

BANQUE MELLIE IRAN,

Petitioner,

—against—

WILLIAM A. LYON, Superintendent of Banks of the State of New York, as Liquidator of the business and property of The Yokohama Specie Bank, Ltd., in the State of New York,

ON WRITS OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

REPLY BRIEF FOR THE SUPERINTENDENT OF BANKS.

EDWARD FELDMAN,
Attorney for Superintendent of Banks,
80 Spring Street,
New York 12, N. Y.

Of Counsel:
DANIEL GERSEN,
HENRY L. BAYLES.

THE COURT PRESS, 130 Cedar Street, N. Y. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 513.

WILLIAM A. LYON, Superintendent of Banks of the State of New York, as Liquidator of the business and property of Yokohama Specie Bank, Ltd., in the State of New York,

Petitioner,

—against—

BANQUE MELLIE IRAN.

No. 528.

BANQUE MELLIE IRAN,

Petitioner,

—against—

WILLIAM A. LYON, Superintendent of Banks of the State of New York, as Liquidator of the business and property of The Yokohama Specie Bank, Ltd., in the State of New York.

REPLY BRIEF FOR THE SUPERINTENDENT OF BANKS.

Plaintiff's statement of facts makes it appear that Executive Order No. 8389 has no application to the transactions upon which its claim rests. However, plaintiff's statement of facts fails to indicate that the funds which it caused to be paid to the New York Agency were transmitted by the Agency to branches of the Yokohama Specie Bank, Ltd., in Japan long prior to the imposition of freezing controls. [See Superintendent's brief on the writs of certiorari Nos.

513 and 528; p. 7, and Opinion of the Court of Appeals (R. 351).] It is because of this fact that this action is governed by the principles governing the *Singer* case. Plaintiff may recover only if the attempted re-transmission of funds from Japan to New York subsequent to the freeze, served to create an enforcible claim against the Agency within the doctrine of that case.*

The attempted re-transmission of funds from Japan to New York was clearly prohibited by the Executive Order. As in the *Singer* case, it constituted a prohibited "transfer of credit" between a "banking institution within the United States" (the Agency and Irving Trust Company) and a "banking institution outside of the United States" (the foreign branches of the bank and Banque Mellie Iran) within the

* Plaintiff argues that in determining whether its claim gave rise to an enforcible obligation against the Agency, the bank and all its branches (including the New York Agency) are to be considered as a unit, and that there is nothing in the law that requires a preferred creditor to be a creditor of the Agency regarded as a separate entity (p. 18). We have not found it necessary in our brief to argue this question since it plainly appears from the opinion of the Court of Appeals that plaintiff's claim was held accrued and established only because the transactions upon which it was based gave rise to an enforcible obligation *against the Agency*. It should be noted, however, that in our view no claim is entitled to be preferred unless the facts upon which it is based would give rise to a claim against the Agency regarded as a separate entity capable of having creditors of its own. Our views on this subject are fully set forth in the reply brief filed by us in the Court of Appeals in the *Banque Mellie* case (pp. 5-43), and this Court is respectfully referred thereto in the event that in its judgment the question again becomes material. The Court of Appeals apparently sustained the views expressed therein for it granted judgment to plaintiff only as to those items which fell within the pattern of the *Singer* case and denied judgment as to the remainder on the ground that there was lacking as to that part of the claim "the essential acknowledgment *by the New York Agency* that *it* was under any obligation to pay plaintiff." (Italics ours.) (R. 353.)

meaning of Section 1A of the Order. In addition, it involved a payment "to" a "banking institution within the United States" (the transfer from the foreign branches of the Bank to the Agency) and a payment "by" a "banking institution within the United States" (the payment by the Agency to Irving) within the meaning of Section 4B of the Order. Again, it involved a dealing in "evidences of indebtedness" (the accounts of the foreign branches on the books of the Agency and the Agency's account with Irving) within the meaning of Section 1E of the Order and, finally, the transaction involved the creation of an interest in blocked property.

Since plaintiff's claim is thus based upon transactions prohibited by the Executive Order, the Court of Appeals correctly held (R. 351) that—

> "Disposition of this appeal is controlled by our two decisions in *Singer* v. *Yokohama Specie Bank*, the one decided today (299 N. Y. 113), the other in 1944 (293 N. Y. 542)."

It is true that the license of March 16, 1950, issued by the Office of Alien Property, now serves to differentiate this case from the *Singer* case and plaintiff has moved to dismiss the present appeal on that ground. Our views as to the effect of that license are set forth in our brief in opposition to the motion to dismiss, and will not be repeated here except to note that since the license of March 16, 1950, was issued after the Court of Appeals had decided this case, its effect was not considered by that court. For that reason it is suggested that the license should not be considered by this Court on the present appeal except

for the purpose of determining whether the appeal itself is moot. Instead, if this Court should agree on the basis of the present record that the Executive Order prevented the creation or accrual of the claim in plaintiff's favor, it should reverse the decision of the Court of Appeals, and remand the case to that court for consideration by it of the effect of the license of March 16th.

Respectfully submitted,

EDWARD FELDMAN,
Attorney for the Superintendent of Banks,
80 Spring Street,
New York 12, N. Y.

Of Counsel:
DANIEL GERSEN,
HENRY L. BAYLES.